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FILED

JUN 07 2016

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO 15-11

**Federal Maritime Commission
Office of the Secretary**

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD**

INFORMAL DOCKET NO 1953(I)

KAIRAT NURGAZINOV,

— vs —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD**

**COMPLAINANTS' MOTION TO STRIKE, TO PRECLUDE, AND TO COMPEL
COMPLIANCE WITH THE PRESIDING OFFICER'S ORDERS**

Pursuant to 46 C.F.R. § 502.210, Complainants, through their Counsel, Marcus A. Nussbaum, Esq., hereby file this Motion for an Order Striking the Answer of Respondents Michael Hitrinov a/k/a Michael Khitrinov ("Hitrinov") and Empire United Lines Co., Inc ("EUL" or "Empire") (individually and collectively, "Respondents"), or in the alternative, for an Order prohibiting Respondents from supporting their defenses, and precluding Respondents from introducing documents into evidence. In the alternative, Complainants respectfully request that the

Presiding Officer now compel Respondents to comply with the Orders to File Shipping Documents in the above captioned matters, dated April 27, 2016

NATURE OF THE CASE

This action arises out of Respondents' numerous violations of the Shipping Act of 1984, 46 U S C §40101 et seq., in that after Respondents had shipped certain automobiles owned by Complainants from the United States to Kotka, Finland, where they were to have been released to Complainants as purchasers, said automobiles were instead converted, sold, and unlawfully released by Respondents to third parties at a location owned by or within Respondents' control. Additionally, Respondents unlawfully exercised maritime liens against Complainants' automobiles.

RELEVANT PROCEDURAL HISTORY

On November 24, 2015 the Presiding Officer issued Initial Orders in the above captioned matters having been consolidated by Order of May 24, 2016, which required, *inter alia*, that the parties 'meet and confer' to establish a schedule for completion of discovery; prepare a joint status report regarding same, and exchange initial disclosures within seven days of the filing of Respondents' Answer herein.

Additionally, the Presiding Officer issued Orders to File Shipping Documents in the above captioned matters, dated April 27, 2016 (the "Orders") which specifically directed Respondents to serve and file with the Commission on or before May 4, 2016 all records relating to the ocean transportation of the subject automobiles, " including, but not limited to, quotes of freight rates for transportation, shipping agreements, booking confirmations, bills of lading, dock receipts, invoices, payments for transportation, Certificates of Title, export and import declarations, notices of arrival, *and any other documents relating to the shipment of the vehicles* " (Emphasis added)

During a telephonic conference held on May 3, 2016, the Presiding Officer further specifically directed that Respondents must produce documents both “ created by Empire and by the vessel operator”

On May 5, 2016, Respondents filed and served documents purporting to pertain to two of the four subject automobiles, to wit: a 2009 Toyota Camry (VIN# ending in 6703), and a 2009 Mercedes-Benz C300 (VIN# ending in 3295) On May 9, 2016, Respondents subsequently filed and served documents purporting to pertain to the remaining two automobiles, to wit: the 2009 GMC Acadia (VIN# ending in 8200) and the 2011 Jeep Compass (VIN# ending in 2296)

On May 27, 2016 Complainants advised Respondents via email that Respondents had not complied with the Orders of April 27, 2016, a copy of which is annexed hereto as **Appendix “1”** Such noncompliance by Respondents included, but were not limited to the following: failure to provide freight rates for transportation of the subject vehicles, failure to provide shipping agreements relating to transport of the subject vehicles, failure to provide booking confirmations regarding space on ocean liners that transported the subject vehicles, failure to provide import declarations and other customs documentation regarding the subject vehicles, failure to provide Notices of Arrival confirming arrival of the subject vehicles at the port of destination, failure to provide validated Certificates of Title for the subject vehicles.

In light of the significant deficiencies set forth above, Complainants suggested that the parties ‘meet and confer’ in accordance with the Commission's Rules of Practice and Procedure, and further suggested the holding of a telephonic conference on a date and time to be agreed upon between the parties. In purported response thereto, and in lieu of making any good faith attempt to resolve the deficiencies of Respondents’ response to the Commission’s Orders, Respondents’

counsel merely provided vague and nebulous responses such as “I will get back to you in due course” and “I have passed your inquiry regarding shipping documents onto my clients”

To date, and despite the foregoing good-faith attempts to cure deficiencies in Respondents’ responses to the Presiding Officer’s Orders, to achieve Respondents’ compliance with the Presiding Officer’s directives, and to ‘meet and confer’ regarding the above, Respondents by their counsel have *failed* to comply with the Presiding Officer’s Orders, *failed* to make any good faith attempt to meet and confer with Complainants, *failed* and refused to proceed with scheduling of depositions, and have generally frustrated and obstructed all reasonable attempts to move forward with discovery in this matter, thus necessitating Complainants’ instant motion.

STATEMENT OF FACTS

Complainants respectfully rely upon findings of fact made by the Presiding Officer in his Notice of Default and Order to Show Cause of March 30, 2016, a copy of which is annexed hereto as **Appendix “2”**, and do incorporate same by reference and make a part hereof as if more fully set forth herein

RELIEF REQUESTED

Pursuant to 46 C.F.R. § 502.210, Complainants request an Order Striking the Answer of Respondents, or in the alternative, an Order prohibiting Respondents from supporting their defenses, and precluding Respondents from introducing documents into evidence at trial hereon. In the alternative, Complainants respectfully request that the Presiding Officer now compel Respondents to comply with the Orders to File Shipping Documents, and produce all documents not yet produced including but not limited to the following: freight rates for transportation of the subject vehicles, shipping agreements relating to transport of the subject vehicles, booking confirmations regarding space on ocean liners that transported the subject vehicles, import

declarations and other customs documentation regarding the subject vehicles, Notices of Arrival confirming arrival of the subject vehicles at the port of destination, validated Certificates of Title for the subject vehicles, and any other documents relating to the shipment of the subject vehicles, all of which Respondents were ordered to provide within the Presiding Officer's Orders of April 27, 2016

Additionally, it is respectfully requested that the Presiding Officer now schedule dates certain for remaining discovery in this matter, including service of demands for document production and interrogatories, responses to same, and dates certain for the holding of depositions.

ARGUMENT

The Material Sought By Complainants Is Discoverable

Standard of Review

It is well settled that pursuant to Federal Rule of Civil Procedure "FRCP" 26(b)(1), " parties may obtain discovery of any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter " See Id

It is further well settled that relevance under Rule 26 is " construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case " See, Oppenheimer Fund, Inc. v. Sanders, 437 U S 340, 351 (1978), ("relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ P 26(b)(1)

It is additionally well settled that District Courts construe Rule 26(b)(1) liberally to provide for a "broad vista of discovery " See, Tele-Radio Systems Ltd. v. DeForest Elec., Inc., 92 F.R.D

371, 375 (D.N.J 1981), see also, Horizons Titanium Corp. v. Norton Co., 290 F.2d 421, 425 (1st Cir 1961), (“Rule 26(b) apparently envisions generally unrestricted access to sources of information, and the [C]ourts have so interpreted it”) Each party is given an opportunity “ to scrutinize all relevant evidence so that each will have a fair opportunity to present its case at trial.” See, Nestle Foods Corp. v. Aetna Cas. & Sur. Co., 135 F.R.D 101, 104 (D.N.J 1990) (citing Goldy v. Beal, 91 F.R.D 451, 454 (M.D.Pa.1981) Accordingly, a party seeking to withhold documents that fall within this broad definition must do more than accuse the requesting party of launching a fishing expedition. See, Hickman v. Taylor, 329 U S 495, 507-08, 67 S Ct. 385, 392 (1947), (“no longer can the time-honored cry of ‘fishing expedition’ serve to preclude a party from inquiring into the facts underlying his opponent’s case”)

CONCLUSION

As set forth above, and as of the time of this writing, Respondents have failed to produce numerous documents including “ any other documents relating to the shipment of the vehicles” as specifically directed in the Presiding Officer’s Order of April 27, 2016

Additionally, and despite numerous ‘good faith’ attempts by Complainants to ‘meet and confer’ with Respondents’ counsel to cure the many deficiencies set forth above and to schedule dates certain for depositions, Respondents have willfully, contumaciously, and intentionally “refused” to so meet and confer or to make any good faith effort to advance discovery in this case

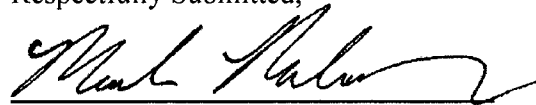
Consequently, Complainants are now compelled to bring on their instant motion to strike the Answer of the Respondents by reason of their willful noncompliance with the Presiding Officer’s Orders, or in the alternative, prohibit Respondents from supporting their defenses, and preclude Respondents from introducing documents into evidence, or, compelling Respondents to

forthwith comply with the Presiding Officer's Orders, and to agree to dates certain for the holding of depositions in this matter

WHEREFORE, it is respectfully requested that the Presiding Officer now grant Complainants' instant motion in its entirety, together with such other and further relief as the Presiding Officer may deem just and proper under the circumstances.

Dated June 7, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Marcus A. Nussbaum', written over a horizontal line.

Marcus A. Nussbaum, Esq
P O Box 245599
Brooklyn, NY 11224
Tel 888-426-4370
Fax. 347-572-0439
Attorney for Complainants
marcus.nussbaum@gmail.com

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

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**MICHAEL HITRINOV a/k/a
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**APPENDIX TO COMPLAINANTS' MOTION TO STRIKE, TO PRECLUDE, AND TO
COMPEL COMPLIANCE WITH THE PRESIDING OFFICER'S ORDERS**

Complainants, through their Counsel, Marcus A. Nussbaum, Esq., respectfully submit this Appendix to their Motion to Strike, To Preclude, And to Compel Compliance with the Presiding Officer's Orders.

Appendix "1" – Email of May 27, 2016

Appendix "2" – Notice of Default of March 30, 2016

APPENDIX “1”

Marcus A. Nussbaum

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Friday, May 27, 2016 5 47 PM
To: Jeffrey, Eric
Subject: FMC Dockets No 15-11 & 1953(l) (Consolidated)
Attachments: Notice of Deposition.pdf

Dear Counsel,

Kindly allow this email to respond to yours of May 25, 2016 in the above referenced matter

In the first instance, please be advised that all discovery demands must be made formally, as opposed to informal emails and first name salutations.

Second, and as to the material you are apparently requesting, you are hereby advised that upon receipt of any formal demand, such discovery will be denied as being violative of the attorney-client privilege and as constituting attorney work product and material otherwise prepared in anticipation of litigation.

Attached herein, please find a Notice to Take Deposition of all respondents by Michael Hitrinov. Kindly contact the undersigned should you have any question regarding the date, time, or location of said deposition.

As of the time of this writing, Complainants have still not yet received documents responsive to the Commission's Order of April 27, 2016. Such outstanding document production includes the following: freight rates for transportation of the subject vehicles, shipping agreements relating to transport of the subject vehicles, booking confirmations regarding space on ocean liners that transported the subject vehicles, import declarations and other customs documentation regarding the subject vehicles, Notices of Arrival confirming arrival of the subject vehicles at the port of destination, validated Certificates of Title for the subject vehicles, " .and any other documents relating to the shipment of the vehicles "

Kindly advise as to a date certain that you will be available to "meet and confer" regarding the above in accordance with the Commission's Rules of Practice and Procedure, and the attached. To that end, we suggest a telephonic conference on a date and time to be agreed upon and as may be convenient to the parties. Kindly consider the foregoing a 'good faith' effort to address, discuss, and set timelines for all remaining and further discovery in this matter, absent the need to unnecessarily seek the Commission's intervention.

Very truly yours,

Marcus A. Nussbaum, Esq
P O Box 245599
Brooklyn, NY 11224
Tel 888-426-4370
Fax. 347-572-0439
<http://www.nussbaumlawfirm.com/>

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential and may be subject to attorney client privilege. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If

you received this message in error, please delete and/or notify the sender by return e-mail. Although our company attempts to sweep e-mail and attachments for viruses, it does not guarantee that either are virus-free and accepts no liability for any damage sustained as a result of viruses. Thank you.

IRS Circular 230 Disclosure. To ensure compliance with U S Treasury regulations we inform you that any U S tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

APPENDIX “2”

S	E	R	V	E	D
March 30, 2016					
FEDERAL	MARITIME	COMMISSION			

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV

v.

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE

On November 12, 2015, complainants Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov commenced this proceeding by filing a Verified Complaint with the Secretary. Respondent Empire United Lines (Empire) is licensed by the Commission as a non-vessel-operating common carrier (NVOCC). Respondent Michael Hitrinov a/k/a Michael Khitrinov is Empire's sole principal and officer. *Baltic Auto Shipping, Inc. v Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (Sept. 15, 2015) (Initial Decision on Respondents' Motion for Partial Summary Decision), exceptions filed, Jan. 15, 2016. The Complaint alleges that Hitrinov owns CarCont, Ltd. (CarCont), a company located in Kotka, Finland, and is "the Chairperson of the Board of CarCont, with signatory authority and direct control over respondent CarCont." (Complaint ¶¶ 11.9-11)

The Complaint alleges that Respondents violated 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, and 41106 of the Shipping Act and Federal Maritime Commission (FMC or Commission) regulations at 46 C.F.R. Part 515, and that Ovchinnikov has suffered direct damages in excess of \$28,960.00, that Rzaeva has suffered direct damages in the excess of \$32,101.00, and that Nekipelov has suffered direct damages in excess of \$19,920.00. Complainants further allege that the full extent of their damages can only be determined after discovery has been conducted and interest due to them and the cost of their legal fees calculated. (Complaint at 15-16.)

HITRINOV AND EMPIRE

On November 18, 2015, the Secretary Issued a Notice of Filing of Complaint and sent the Notice and the Complaint by United Parcel Service (UPS) to Hitrinov and Empire at the address identified in the Complaint as Empire's principal place of business: 2303 Coney Island Avenue, Brooklyn, NY 11223. I take official notice of Commission records indicating that 2303 Coney Island Avenue, Brooklyn, NY 11223, is Empire's address on file with the Commission's Bureau of Certification and Licensing. See <http://www2.fmc.gov/oti/NVOCC.aspx> (last visited March 25, 2016). I also take official notice of the Answer filed by Hitrinov and Empire in FMC Docket No. 14-16 stating that their address is 2303 Coney Island Avenue, Brooklyn, NY 11222. *Baltic Auto Shipping, Inc. v Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (Jan. 21, 2015) (Answer). The USPS web site states that 11223 is the correct zip code for this address. See <https://tools.usps.com/go/ZipLookupResultsAction!input.action?resultMode=1&companyName=&address1=2303+Coney+Island+Avenue&address2=&city=Brooklyn&state=NY&urbanCode=&postalCode=&zip=>

UPS returned both envelopes sent by the Commission for the following reason: "The receiver did not want the product and refused delivery." The Commission also published the Notice of Filing of Complaint and Assignment in the Federal Register *Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov v Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., and CarCont, Ltd., Notice of Filing of Complaint and Assignment*, 80 Fed. Reg. 73186 (Nov. 24, 2015). Complainants engaged special process servers to serve the Complaint on Hitrinov and Empire. (Complainants' Motion for a Default Judgment Against Defendants Exh. D (Hitrinov served December 4, 2015), Exh. F (Empire served December 29, 2015).) See 46 C.F.R. § 502.113(b) (permitting complainant to effect proper service). Therefore, it appears that Hitrinov and Empire have notice of this proceeding and an opportunity to be heard on Complainants' allegations. Hitrinov and Empire have not answered or otherwise responded to the Complaint.

On February 14, 2016, Complainants filed a motion for decision on default against Hitrinov and Empire. Complainants served the motion by mailing it first class to Hitrinov and Empire at 2303 Coney Island Avenue, Brooklyn, NY 11223, and to CarCont in Kotka, Finland. (Complainants' Motion for a Default Judgment against Respondents, Certificate of Service.) Respondents have not responded to the motion for decision on default.

Respondents Hitrinov and Empire are currently in default. There may be some valid reason why they have failed to respond to the Complaint or the motion for default. Therefore, they will be granted additional time to respond to the Complaint and to show cause why judgment should not be entered against them. If Hitrinov and Empire fail to respond to this Order by April 14, 2016, an initial decision on default may be entered against them in the amount of \$80,981.00 plus interest, attorney fees, and other damages as appropriate.

In their answer filed in Docket No. 14-16, Hitrinov and Empire stated that their email address is michael@eulines.com. *Baltic v Hitrinov and Empire, Inc.*, FMC No. 14-16 (Jan. 21, 2015) (Answer and Counterclaim of Respondents Michael Hitrinov and Empire United Lines Co., Inc.) (filed). In addition to other methods of providing notice, the Office of Administrative Law Judges will send a PDF copy of this Notice of Default and Order to Show Cause to Hitrinov and Empire at their email address.

CARCONT

On November 18, 2015, the Secretary sent the Complaint and Notice by FedEx to CarCont at the address identified in the Complaint as CarCont's principal place of business. Merituulentie 424, 48310, Kotka, Finland. FedEx was unable to deliver to CarCont and subsequently returned the Complaint and Notice to the Commission.


Complainants do not ask for default against CarCont. Furthermore, it does not seem that the record would support a finding that CarCont has notice of this proceeding. Complainants may choose to serve the Complaint on CarCont pursuant to Commission Rule 502.113(c) as they did with Hitrinov and Empire. If Complainants do so, "an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service." 46 C.F.R. § 502.113(c) (2015). Otherwise, Commission Rules provide that "[t]he presiding officer may dismiss a complaint that has not been served within thirty (30) days after the complaint was filed." 46 C.F.R. § 502.113(d). Complainants should advise the Commission of their intention regarding CarCont.

ORDER

For the reasons stated above, it is hereby

ORDERED that on or before April 14, 2016, respondents Hitrinov and Empire serve and file their answer or answers to the Verified Complaint. It is

FURTHER ORDERED that on or before April 14, 2016, respondents Hitrinov and Empire show cause why an initial decision on default should not be entered against them.



Clay G. Guthridge
Administrative Law Judge

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

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INFORMAL DOCKET NO 1953(I)

KAIRAT NURGAZINOV,

— vs —

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MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO , INC., and CARCONT, LTD

CERTIFICATION OF MARCUS A. NUSSBAUM, ESQ.

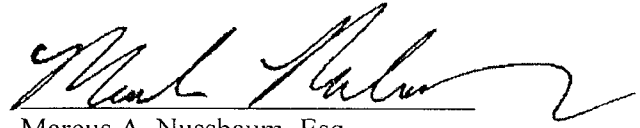
Marcus A Nussbaum, Esq., pursuant to 28 U S C 1746, making the following
Certification under penalty of perjury, in lieu of oath or affidavit says

1 I submit this Certification in support of Complainants' Motion to Strike, to
Preclude, and to Compel Compliance with the Presiding Officer's Orders

2 On May 27, 2016, I attempted to confer with counsel for the Respondents in an
effort to obtain Respondents' compliance with the Presiding Officer's Orders of April 27, 2016,
without the necessity of a motion. A copy of my email correspondence to Respondents' counsel,
in which I attempted to confer on this issue is annexed as an appendix to the accompanying motion

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 7, 2016



Marcus A Nussbaum, Esq

MARCUS A. NUSSBAUM, ESQ.

REC-IVED

2016 JUN 17 PM 12 15

U.S. DEPT. OF THE S. CLT
FEDERAL MARITIME COM.

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Email. marcus.nussbaum@gmail.com

Web www.nussbaumlawfirm.com

June 7, 2016

Federal Maritime Commission
800 North Capitol Street, N W
Washington, D C 20573
Attn Office of the Secretary
Attn Karen V Gregory

Re *Igor Ovchinnikov, et al, v Michael Hitrinov a/k/a Michael Khitrinov, et al*
FMC Docket 15-11

Kairat Nurgazinov, v Michael Hitrinov a/k/a Michael Khitrinov, et al
FMC Informal Docket 1953(I)

Dear Ms Gregory

I represent the Complainants in the above referenced matters

Attached, please find an original and five copies Complainants' Motion to Strike, to Preclude, and to Compel Compliance with the Presiding Officer's Orders Respondents have been additionally served herein via First Class Mail

We thank the Commission for its continued courtesy and consideration

Respectfully Submitted,



Marcus A. Nussbaum, Esq

P O Box 245599

Brooklyn, NY 11224

Tel 888-426-4370

Fax 347-572-0439

Attorney for Complainants

marcus.nussbaum@gmail.com

cc Nixon Peabody LLP
Attn Eric C Jeffrey, Esq
799 9th Street NW, Suite 500
Washington, DC 20001-4501

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' MOTION TO STRIKE, TO PRECLUDE, AND TO COMPEL COMPLIANCE WITH THE PRESIDING OFFICER'S ORDERS, CERTIFICATION OF MARCUS A. NUSSBAUM, and APPENDIX** upon Respondents' Counsel at the following address

Nixon Peabody LLP
Attn Eric C Jeffrey, Esq
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com)

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

Marcus A. Nussbaum, Esq
P O Box 245599
Brooklyn, NY 11224
Tel 888-426-4370
Fax. 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

Dated June 7, 2016 in Brooklyn, New York.